

Case Summary

Jeanette Brantley was convicted of attempted battery by body waste, a class D felony.¹ She also pleaded guilty to being a habitual offender.² Brantley argues that there is insufficient evidence to support her conviction for attempted battery by body waste; the trial court erred by allowing the State to use a peremptory strike to remove the only African-American from the jury panel; and that the trial court erred in instructing the jury. Because we cannot conclude that the jury's verdict was unanimous, we reverse.

Facts and Procedural History³

On February 20, 1999, at approximately 9:20 p.m., the South Bend Police Department dispatched Corporal Thomas Williams to the Park Jefferson Apartments. When Corporal Williams arrived at the apartments, Brantley was standing in the parking lot, screaming at someone. Brantley was bleeding either from her nose or mouth and yelling vulgarities. Corporal Williams handcuffed Brantley, placing her hands behind her back. He also placed her in the back seat of his squad car to transport her to the county jail. A Plexiglas barrier separated the back seat from the front seat of the squad car.

During the drive to the jail, Corporal Williams heard Brantley clear her throat or sinuses and heard her spit. He requested that she not spit in his car because he would have to clean up any mess that was made. When they reached the jail, Corporal Williams

¹ Ind. Code § 35-42-2-6; 35-41-5-1.

² Ind. Code § 35-50-2-8.

³ Oral argument was held in this case on April 9, 2001, at Chesterton High School in Chesterton, Indiana. We express our appreciation to the school, its staff and students for their hospitality and to counsel for the quality of their presentations.

opened Brantley's door, and she exited the vehicle. While she was leaving the car, Corporal Williams heard her clear her sinuses again and saw her cheeks "pop out." Corporal Williams described the situation by saying that she was "looking at me as if she's . . . going to let go with it into my face." Record at 293. In order to avoid being spit on, Corporal Williams pushed Brantley's face away from him. Brantley relented and did not spit on him.

When Corporal Williams returned to his squad car, he found blood and spit on the back seat, the doors, and the Plexiglas barrier above where his right shoulder had been. He took photographs of the blood splattered on the back seat and the doors.

Brantley was charged with attempted battery by body waste, disorderly conduct,⁴ and being a habitual offender. The State dismissed the disorderly conduct charge. Trial was held on the attempted battery by body waste charge.

Brantley was convicted by the jury of attempted battery by body waste. Subsequently, Brantley pleaded guilty to being a habitual offender. This appeal followed.

Discussion & Decision

In this case, the State charged Brantley as follows:

On or about the 20th day of February, 1999, in St. Joseph County, State of Indiana, JEANETTE BRANTLEY, "AKA" JEANETTE McKINNEY did knowingly or intentionally in a rude, insolent, or angry manner attempt to place body fluid on a law enforcement officer, to wit: she attempted to spit at and in the face of Corporal Thomas Williams, of the South Bend Police

⁴ Ind. Code § 35-45-1-3.

Department, while Corporal Williams was engaged in the performance of official duties.

Record at 5. At trial, the State proceeded to present evidence of two separate acts of attempted battery by body waste. A jury must unanimously agree regarding which crime a defendant committed. *Castillo v. State*, 734 N.E.2d 299, 303 (Ind. Ct. App. 2000), *aff'd on appeal*, 741 N.E.2d 1196 (Ind. 2001) (citing *Richardson v. United States*, 526 U.S. 813 (1999)).

In *Castillo*, the defendant was charged with one count of dealing in cocaine. However, at trial, the prosecution presented evidence of two separate episodes of dealing in cocaine, one at Arnaldo Garcia's home and one at Castillo's home. We held it was error to allow a jury to hear evidence of two separate episodes of criminal conduct when the defendant is charged with only one act. In reaching this conclusion, we stated, "It is possible . . . that some jurors believed that Castillo committed the earlier dealing crime at Garcia's home while other jurors believed that Castillo committed the dealing violation at his home later that same day." *Id.* at 304-05. Therefore, it was possible, based on the two acts, that the jury's verdict of guilty regarding the charge of dealing in cocaine was not unanimous.

This case is analogous to *Castillo*. Here, the State chose to charge Brantley with only one act of attempted battery by body waste. However, there was evidence that Brantley may have committed two separate acts of attempted battery: one in the squad car and one upon her exit from the car. The charging information did not specify for which incident Brantley was being charged. Some of the jurors may have believed that

Brantley committed the attempted battery in the squad car while other jurors may have believed that Brantley committed the attempted battery as she exited the car. Thus, it is possible that the jury did not reach a unanimous verdict regarding the charge of attempted battery by body fluid. Because the prosecution presented evidence of two separate acts while charging Brantley with only one count, we are unable to determine whether the jury reached a unanimous verdict. Accordingly, we vacate Brantley's conviction for attempted battery by body fluid.

Because we reverse on the lack of jury unanimity, we need not address Brantley's other arguments.

Reversed.

BROOK, J., and BARNES, J., concur.